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Item 5 (b) of the provisional agenda
International Convention on the Harmonization of Frontier Controls of Goods (1982): Proposals for a new Annex 10 on sea ports

Proposal for a new Annex 10 on seaports

Note by the secretariat*

I. Background and mandate

1. This document contains comments on draft Annex 10 received by the secretariat since the 141st session of the Working Party on Customs Questions affecting Transport (WP.30) when the first draft of Annex 10 was submitted for consideration of the Working Party (as contained in the document ECE/TRANS/WP.30/2015/21).

2. Comments on Annex 10 submitted to the 141st WP.30 session are contained in document (Informal document WP.30 (2015) No. 13 of 30 September 2015).

3. Here is the summary of comments received by the secretariat:

(a) From Eurasian Economic Commission:

- Detailed suggestions on changes to the text of the draft Annex 10 (see in Annex I of this document) and suggestions on the IMO (International Maritime Organization) FAL 65 Convention – to include, if required, its provisions directly into the text of Annex 10 (see Annex II of this document).

* The received comments are reproduced in the form and language as received by the secretariat. The comments submitted in Russian were unofficially translated into English by the secretariat.

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- Suggestions to revise the Harmonization Convention, 1982, to ensure the compatibility of its annexes with the HC original text (see Annex III of this document).

(b) Comments from Ukraine on the text of the draft annex 10 (see Annex IV of this document).

(c) From FONASBA (Federation of National Associations of Ship Brokers and Agents). With reference to suggestions contained in the informal document WP.30 (2015) No. 13 of 30 September 2015, FONASBA supported the proposals to include references to the IMO FAL 65 Convention (and to other relevant IMO recommendations) in Article 7, paras. 1 and 3 of the current draft Annex 10.

Annex I

Draft Annex 10 – comments from Eurasian Economic Commission[1, 2]

Draft Annex 10

Facilitation of border crossing procedures for international maritime freight

Article 1
Principles

1. This Annex, supplementing the provisions of the Convention, is intended to define the steps that need to be taken to facilitate and expedite the crossing of borders for international maritime freight.

2. The Contracting Parties shall undertake to cooperate in order to facilitate and standardize, as fully as possible, formalities and requirements in respect of documents or procedures ~~*in connection with the controls of goods carried*~~ ***related to the carriage of goods by maritime transport***.

3. The present Annex shall apply without prejudice to applicable international standards and agreements.

Article 2
Facilitation of visa procedures for *members of* maritime crews

1. The Contracting Parties shall endeavour to facilitate the procedures for granting visas for maritime crews engaged in international ~~*long-haul*~~ and cabotage freight in accordance with national and, where applicable, international legislation.

2. The Contracting Parties agree to regularly exchange information on best practices with regard to the facilitation of visa procedures for ***members of*** maritime crews.

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[1] Note from United Nations Economic Commission for Europe (UNECE) secretariat: comments and changes in the text, as suggested by the Eurasian Economic Commission's (EEC) are reproduced in **bold** and *italic*.

[2] EEC comments: provisions under item 3 of this article do not exist in the previous annexes to the Convention. Wherein there are general (not specific) approaches to these issues that are contained in the main text of the Convention on the Harmonization (article 14).

We think that it would be appropriate to include the provisions of item 3 of this draft Annex, if necessary, into the general provisions of the Convention on the Harmonization.

Article 3
International maritime transport operations[3]

1. In order to facilitate the international movement of goods, the Contracting Parties shall regularly inform all ***Contracting*** Parties involved in international ***maritime*** transport operations on ***existing and (or) the planned*** requirements ***during the state*** control in relation to the international ~~maritime~~ ***seaports of cargo***, as well as on the actual ~~situation in the ports~~ ***functioning of border crossing points located at seaports***.

2. Contracting Parties shall endeavor to transfer, to the extent possible, ***to carry out*** all necessary ***state*** control procedures to the places of departure and destination of the goods transported by sea so as to alleviate congestion at maritime ports.

3. Referring in particular to ***provisions*** of Article 7 of this Convention, priority shall be given to urgent consignments, e.g. live animals and perishable goods. In particular, the competent services and authorities at border crossing points ***situated*** in maritime ports in cooperation with relevant stakeholders:

(i) shall take the necessary measures to minimize waiting times for vessels transporting perishable foodstuffs ***and (or)*** ~~***for vessels transporting***~~ live animals, as from their time of arrival in the ***maritime*** port until the ***beginning state control operations (in*** particular their border, customs, sanitary-quarantine, quarantine, phytosanitary and veterinary controls);

(ii) shall ensure that ~~***the required***~~ ***the required types of state controls*** mentioned under paragraph (i) ***of this Article*** are carried out as quickly as possible;

(iii) shall allow, as far as possible, the operation of the necessary refrigerating units of containers carrying perishable foodstuffs during the time of discharge of the goods, unless this is impossible as a result of the required ***state control*** or discharge procedure;

(iv) shall co-operate, in particular through advance information exchange, with their counterparts in other Contracting Parties in order to accelerate procedures for perishable foodstuffs and live animals, in case these loads are subject to sanitary and veterinary inspections.

Article 4
Facilities at maritime ports

~~*1.*~~ To rationalize and expedite the required formalities at maritime ports, the Contracting Parties in cooperation with relevant stakeholders shall endeavor to ensure, to the extent possible, ~~***that ports are equipped with***~~***, at checkpoints located at seaports, the respect of the following minimum requirements for such checkpoints***:

(i) ***Existence*** of the buildings ~~***(premises)***~~, facilities and technical equipment enabling them to carry out daily and round-the-clock ***state*** controls, ~~***if this is justified and is appropriate to the volume of freight traffic***~~;

[3] Comment from ECE: in sub point 3 of this Article the reference is made to the Article 7 of the Convention on the Harmonization. However, the provisions of this Article (7) apply when Contracting Parties have a common land border, which in this case is not correct. We suggest to consider the feasibility of either adjusting the provision of Article 7 of the Convention on the Harmonization or specifying the provisions of sub point 3 of this article without reference to other provisions of the Harmonization Convention.

(ii) ~~*Technical equipment allowing for phytosanitary, veterinary and other controls*~~; ***Ensuring officers carrying out the state control are provided with necessary and modern technical means***;

(iii) ***Organization*** of adequate carrying and traffic capacity ***of checkpoints situated in the maritime ports*** and of hinterland transport infrastructure for the volume of traffic;

(iv) Inspection areas ***Existing of the state control areas***, as well as warehouses for the temporary storage of ***shipments*** (goods) subject to customs and (***or***) other forms of ***state*** control, including storage of perishable foodstuffs;

(v) ***The presence of the required amount of qualified staff of state control, taking into account traffic volume, as well as other bodies and organizations***; ~~*Sufficient and qualified staff for all services, including customs, border and other agencies*~~;

(vi) ***The availability of equipment, facilities, information technology and communications systems to enable the exchange in advance of electronic information relating to a marine vessel and its cargo.*** ~~*Information technology and communications systems that will enable the electronic exchange of advance information pertaining to the ship and its cargo for customs, as well as security purposes.*~~

Article 5
Controls

The Contracting Parties:

(i) Shall endeavour to expedite required ***state control*** formalities by establishing, to the extent possible, mechanisms for reciprocal recognition of ***certain*** ~~*some*~~ forms of ***state*** control of ***maritime*** vessels, ***transported by them*** containers and goods, ***provided the objectives of such controls thereof coincide***;

(ii) Shall, to the extent possible, grant facilitations and simplified ***state control*** procedures on the basis of risk assessment.

(iii) Without prejudice to the applicable provisions of this Convention, shall carry out ***state*** control of transit goods only in cases where these are warranted by the actual circumstances or risks.

Article 6
Time limits

The Contracting Parties, in cooperation with relevant stakeholders, shall endeavour to determine time limits for technical operations involving the reception of vessels in ***maritime*** ports, including ***carrying out*** all ***types*** of ***state*** controls, and shall endeavour to reduce these time limits by improving the technology and equipment used. The Contracting Parties shall monitor their achieved reduction in time limits and ***share the results of efforts to reduce the time limits***.

Article 7
Documentation

1. The Contracting Parties shall ensure that shipping and accompanying documents are properly formulated in accordance with the legislation of the ~~*importing and transit countries*~~ ***Contracting Parties that participate in transportation***. The Contracting Parties shall endeavour to reduce the number of documents required for import, export and (***or***) transit of goods entering or leaving the ***maritime*** port by sea or hinterland, as required.

2. In their mutual relations, the Contracting Parties shall endeavour to reduce paper documents and to simplify documentation procedures by using electronic systems for the exchange of information. The Contracting Parties shall endeavour to use electronic systems for the exchange of information as a single point of receipt and processing of the information and, as far as possible, payment of port, customs and other duties.

3. The Contracting Parties shall endeavour to provide customs authorities with advance information on goods arriving in ***checkpoints located*** in maritime ports.

4. The Contracting Parties shall endeavour to use uniform or harmonized transport and ***(or) other*** regulatory documents, that ***are used in the organization and implementation of the international transport of goods by sea, ~~in particular~~ including*** under multimodal deliveries.

Article 8
Reporting mechanism

With regard to Articles 1 to ~~6~~ 7 of this Annex, the Executive Secretary of the Economic Commission for Europe of the United Nations (UNECE) shall carry out, every second year, a survey among Contracting Parties on progress made in the implementation of this Annex.[4]

[4] Comment from ECE: the provisions of this Annex are of recommendatory character (use of the word "seek"). To improve the efficiency and effectiveness of the implementation of the provisions of this Annex it is proposed to hold jointly with the Contracting Parties to the Convention on the Harmonization and members of the Working Party on Customs Questions Affecting Transport, a feasibility study to strengthen the binding nature of the provisions of this Annex.

Annex II

General comment from Eurasian Economic Commission (EEC)

Regarding IMO FAL 65 Convention and draft Annex 10

(with reference to suggestions as contained in the Informal document WP.30 (2015) No. 13 of 30 September 2015)

1. We believe that this issue requires further discussion and a complex consideration.

2. As a first reflection, we consider it possible to note the following:

   - In our opinion, to make it easier to make statements and for the subsequent implementation of the Annex 10, in case of a need, we suggest to consider the feasibility of including separate provisions of the IMO FAL 65 Convention directly into the Annex 10 (taking into account the necessity of the editing of the text to adapt the style of the IMO Convention to that of Annex 10).

   - Perhaps, this approach will allow to avoid an appearance of the controversial issues concerning "priority and superiority" between two legal instruments, i.e. Harmonization Convention and IMO FAL 65 Convention.

Annex III

United Nations International Convention on the Harmonization of Frontier Controls of Goods, 1982 ("Harmonization Convention") – comments from Eurasian Economic Commission (EEC)

(EEC propositions below were prepared in cooperation with the Republic of Belarus, Republic of Kazakhstan and the Russian Federation and concern the revision of the International Convention on the Harmonization of Frontier Controls of Goods, 1982.)

1. We consider that the most acceptable option of work on the revision of the International Convention on the Harmonization of Frontier Controls of Goods, 1982 (Convention on the Harmonization) will be preparing a new text using the current terminology and with simultaneous changing of the structure of the Convention on the Harmonization.

2. Current structure of the Convention on the Harmonization should be changed for the following reasons:

(a) Considering that the changes in terminology it would be easier to revise the text of the Convention on the Harmonization, than to implement the existing text of the new provisions;

(b) The presence of duplicating provisions concerning the principles of different types of state control which is advisable to place in the main text of the Convention on the Harmonization instead of placing them in annexes, and thereby reduce the text of the Convention on the Harmonization that permits to make a presentation of its provisions succinct.

3. The following option of the structure of the Convention on the Harmonization is suggested:

(a) General provisions:

(i) Principles, purposes, goals, definitions, scope of the Convention on the Harmonization.

(b) Harmonization of procedures of types of state control at the customs border:

(i) Principles of carrying on of types of state control;

(ii) Coordination of types of state control

(iii) General conditions of types of state control at the custom border (including for transit shipments);

(iv) General requirements for the equipment for border crossing points to ensure organization of the types of state control at the customs border;

(v) Exchange of information between public authorities, information for the participants of foreign economic activity to ensure the types of state control, cooperation between neighbouring states or between integration groupings;

(vi) Conditions of the exchange of the results of the state control and of mutual recognition of such results by the Contracting Parties to the Convention on the Harmonization.

(c) Final provisions:

(i) Use of exceptional and emergency measures;

(ii) Signature, ratification, acceptance, accession ;

(iii) Coming into effect, denouncement, termination of the Convention; alteration, disputes solving, stipulation.

(d) Enclosures:

(i) Rules of Procedure of the Administrative Committee of the Harmonization Convention;

(ii) Specifics of the organization of certain types of control;

(iii) Specifics of border crossing facilitation for various types of transport.

4. We think it appropriate to provide in the Convention on the Harmonization the provisions concerning:

(a) Categorization of checkpoints and determine the appropriate evaluation of their performance;

(b) Coordinated modernization by neighbouring contracting parties of common areas and of infrastructure checkpoints and participation (including financial) in such work of third contracting parties (for example, participation of countries of departure and of destination in modernization of customs points at transit countries on the route of transit goods to or from such countries);

(c) Determining by the contracting parties to the Convention on the Harmonization, where possible, common evaluation criteria that correspond to different types of state control at the customs border;

(d) Organization of events on experience sharing, informational seminars by the contracting parties;

(e) Rules on organization and conducting meetings of expert groups on operational consideration of issues that arise in practice of the work of regulatory authorities issues and on making effective decisions;

(f) Appointment of coordinators by each contacting party for the implementation of the provisions of the Convention on the Harmonization;

(g) Establishing minimal possible time to consider and to make decisions on changes to the Convention on the Harmonization.

Annex IV

Draft of Annex 10 – comments from Ukraine[5]

Draft Annex 10

Facilitation of border crossing procedures for international maritime freight

Article 1
Principles

New suggested Article "Definitions" or suggested text (see below) to be added under the existing Article 1 as a sub-point "Definitions"

1. An international seaport means a port in which necessary administrative border crossing procedures are carried out in respect of goods arriving and/ or leaving by sea and hinterland means of transport. The concept of "international sea port" includes a combination of port infrastructure elements (marine terminals, stevedoring complexes), technologically connected and intended, and (or) used to carry out operations with goods including their transshipment, maintenance of vessels and other vehicles and (or) servicing of passengers; as well as other seaport infrastructure elements, intended to ensure the safety of navigation, provide seaport services, support state control and supervision.

(«area of land and part of the water area, furnished and equipped in a way to be used for the reception of ships, their loading and unloading, storage of goods, receipt of these goods from the operators of inland waterway transport, and transfer of such goods and may also include the activities of the organizations involved in maritime transport»)

New point/sub-article (text below) – suggested to be added under Article 1 or under Article 5 (as "integrated border management" or "single window"

...

Since cargo operations at seaports are run mainly by private operators, the Contracting Parties should seek to work closely with port authorities, terminal operators and other private operators in the seaports, in order to promote and guarantee the implementation of the provisions of this Convention.

Article 3
International maritime transport operations

Original text	*Suggested changes*
1. In order to facilitate the international movement of goods, the Contracting Parties shall regularly inform all parties involved in international transport operations in a harmonized and coordinated manner on border control	To complement point 1 with the following wording ***("For this purpose, the Parties shall designate coordination centres".)***

[5] Note from ECE secretariat: comments and changes to the text, as suggested by Ukraine, are reproduced in **bold** and *italic*.

Original text	*Suggested changes*
requirements for international maritime ports as well as on the actual situation in ports.	
1. …	*1.* …
(ii) shall ensure that the required controls mentioned under paragraph (i) are carried out as quickly as possible;	***(ii) shall ensure that the required controls mentioned under paragraph (i) could be initiated with the submission of copies of transportation and accompanying documents and shall be implemented in the shortest possible time;***
…	…
(v) **New provision**	***(v) provide necessary measures on accelerating border crossing procedures for goods transported in intermodal mode, including under the Customs Convention on the International Transport of Goods under cover of TIR Carnets (TIR Convention, 1975).***
	Suggestion from Ukraine
	to mention in (v) all documents of universal character plus TIR

Article 4
Facilities at maritime ports

Original text	*Suggested changes*
1. …	1. …
(ii) Technical equipment allowing for phytosanitary, veterinary and other controls;	(ii) technical means to allow phytosanitary, veterinary ***and other forms of control***;

Article 5
Controls

Original text	*Suggested changes*
The Contracting Parties:	The Contracting Parties:
(i) Shall endeavour to expedite required control formalities by establishing, to the extent possible, mechanisms for reciprocal recognition of some forms of control of vessels, containers and goods, provided the objectives thereof coincide;	(i) Shall endeavour to expedite required control formalities by establishing, to the extent possible, mechanisms for the reciprocal recognition of ***the results*** of some forms of control of vessels, containers and goods, provided the objectives thereof coincide;
(ii) Shall, to the extent possible, grant facilitations and simplified control procedures on the basis of risk assessment.	(ii) Shall, to the extent possible, grant facilitations and simplified control procedures on the basis of risk assessment ***and management***.
iii) **New provision**	(iii) ***ensure that their authorities and agencies responsible for the control and border***

Original text	*Suggested changes*
	procedures related to import, export and transit of goods interact with each other and coordinate their activities in order to facilitate transport and trade.
(iv) Without prejudice to the applicable provisions of this Convention, shall carry out inspections of transit goods only in cases where these are warranted by the actual circumstances or risks.	***(iv) provide the goods, which are in transit through the territory of any other Contracting Party, with treatment not less favourable than the one accorded to the same goods, if they are transported from their place of origin to their destination without going through the territory of a Contracting Party. Without prejudice to the applicable provisions of this Convention shall carry out inspections of transit goods only in cases where these are warranted by the actual circumstances or risks.***
	Transit goods in a container, contrailer or in a freight wagon, closed and sealed properly and provided with relevant documentation are not usually subject to customs inspection.
(v) New provision	***(v) Ensure the weight control of containers and of vehicles during the loading of the cargo (containers) on a transport vehicle in accordance to the weight regulations of the country of arrival of the goods with issuing an international weight certificate (article 5 of Annex 8 to HC). Overloading of vehicles (containers) is not allowed.***

Article 6
Time limits

Original text	*Suggested changes*
The Contracting Parties, in cooperation with relevant stakeholders, shall endeavour to determine time limits for technical operations involving the reception of vessels in ports, including all types of controls, and shall endeavour to reduce these time limits by improving the technology and equipment used. The Contracting Parties shall monitor their achieved reduction in time limits.	***The Contracting Parties are recommended to periodically and in a consistent manner to establish, measure and publish time limit norms for technical operations involving the reception of vessels and clearance of goods in ports, including all types of controls, and to reduce these time limit norms by improving the technology and equipment used. The Contracting Parties may share the achieved results.***

Article 7
Documentation

Original text	*Suggested changes*
1. Contracting Parties shall ensure that shipping and accompanying documents are	***1. The Contracting Parties shall ensure that shipping and accompanying documents are***

Original text	*Suggested changes*
properly formulated in accordance with the legislation of the importing and transit countries. The Contracting Parties shall endeavour to reduce the number of documents required for import, export and transit of goods entering or leaving the port by sea or hinterland, as required.	***properly formulated in accordance with international legal instruments (Convention FAL-65, recommendations of the IMO). Contracting parties shall seek to reduce the number of documents required for imports, exports and transit of goods entering or leaving the port by sea or hinterland and provide that such requirements formalities and documentation:*** ***(a) were adopted and/or used for the purpose of rapid release and clearance of goods;*** ***(b) were adopted and/or used for the purpose of diminishing time and expenses for business and operators;*** ***(c) were measures that are the least restrictive to trade (when there are two or more alternative measures to fulfil public policy objectives or the objectives referred to).***